

Remark

Applicants respectfully request reconsideration of this application as amended.

Claims 1-28 have been cancelled. Claims 29-77 are new. These new claims are based on the original cancelled claims but due to the large number of clarifying amendments have been rewritten as new claims. This is intended to make the new claims easier to read and understand. Therefore, Claims 29-77 are present for examination.

35 U.S.C. §102 Rejection

The Examiner has rejected Claims 1, 3-8, 10, 12-15, 18 and 21-22 under 35 U.S.C. §102(e) as being anticipated by Herz et al. U.S. Patent No. 5,758,257 ("Herz"). Herz shows a system that collects demographic and profile information from entertainment customers but that seriously discounts any actual survey or poll responses from these customers. "People often do not provide all of the necessary responses or the correct responses to such ballots or questionnaires." (13:60-62) Instead the system tries to obtain information about the characteristics that a particular customer likes in shows and then presents shows having those characteristics. The likes can also be collected by asking the customer to name some favorites. (12:2-6) "[A] customer may constantly underestimate or overestimate his/her preference rating for a characteristic." (15:11-13) As a result, an original customer profile or agreement matrix must be constantly adjusted and refined primarily by monitoring what the customer watches.

As for rating an actual program, this is done in two ways. First, it is done by expert panels or focus groups in order to determine the characteristics of a particular show. The characteristics are then plugged into the agreement matrix of a particular customer to

determine if the customer will like it. (13:12-26) Second, a target audience can watch clips and rate the clip for how much of a characteristic it has and how pleasing it was for the characteristic to be at that level. Herz calls this process a "rave review." (14:11-49) It is unclear to Applicants whether the target audience members are acting for their respective demographic group or whether they are fine tuning their own profiles. It is clear however, that they are not watching a program and then filling out a survey or questionnaire. Herz discredits such a practice as unreliable. Instead Herz teaches a complicated sophisticated system based primarily on demographics and on recording what each customer actually watches.

The present invention does not require such complexity. The basic teaching and underlying premise of Herz is that viewer feedback is not trustworthy. The fundamental objective in Herz is to present the viewer with an ever-better list of choices that are calculated to match up with the viewer's tastes without the viewer having any direct interaction with or knowledge of the process by which the list is created. In the present invention, the viewer is very aware of how ratings are generated. The viewer provides feedback and receives ratings based on the same type of feedback from other viewers. The viewer is then allowed to make its own decision as to whether ratings based on feedback from other viewers can be trusted. The ratings can be further refined using viewer characteristic information such as demographics and system hardware capabilities. This allows the viewer to look at ratings from his own or another demographic group in order to make a viewing decision. For example, a male viewer 29 years old from a rural area may choose to watch or not to watch a show that is highly rated by urban female teens. In Herz, these ratings are unlikely to be made available to the rural male 29-year old.

These distinctions are brought out in the new claims. New Claim 29, as amended, recites, "presenting a broadcast to a viewer; receiving viewer feedback to the broadcast; generating a rating of the broadcast based at least in part on the received viewer feedback to the broadcast, the rating indicating a likelihood of interest in the first broadcast for potential subsequent viewers; and providing the rating of the broadcast to potential subsequent viewers."

Looking again at Herz. Herz does not teach "generating a rating of the broadcast based at least in part on the received viewer feedback to the broadcast." Herz uses the expert panel approach or the "rave review." Viewer feedback is distrusted in Herz. In addition, Herz does not teach "providing the rating of the broadcast to potential subsequent viewers." Herz uses an agreement matrix to generate a list of shows calculated to please a particular viewer. Accordingly, Claim 29 is believed to be allowable over the reference. Independent Claims 48, 60, 64, 68, 34, 32, 33, 31 contain similar limitations and are believed to be allowable on similar grounds. The remaining claims are dependent on one of the independent claims and are believed to be allowable therefor as well as for the limitations specifically set forth therein.

Certain of the dependent claims merit specific mention. Only the claims which depend from Claim 29 are mentioned here, however, the remarks apply equally to similar dependent claims which depend from other independent claims. Claim 31, for example, recites, "providing a questionnaire in response to a request from a viewer to provide feedback." Herz does not allow viewers to request questionnaires and decide what they will rate.

Claim 38 recites that "the viewer characteristic information includes hardware capabilities of a viewer entertainment system." Herz make no mention of taking this factor into consideration. It may be that some shows are rated more highly by those with e.g.

surround sound processors. The present invention allows this information to be noted and reported back to potential subsequent viewers.

Claim 39 recites, "the rating comprises an indication of a proportion of viewer feedback which is positive toward the broadcast." Herz, does not show the viewer how others rated a program. Claim 42 recites, "providing the rating along with a programming guide." Herz does not provide any ratings with its programming list.

35 U.S.C. §103 Rejection

The Examiner has rejected Claims 2, 9, 11, 16, 17, 20 and 23-28 under 35 U.S.C. §103(a) as being unpatentable over Herz and Harada et al. U.S. Patent No. 5,721,583 ("Harada"). Harada shows a system that presents a poll on a display to viewers. The responses are received and linked to personal attributes (Fig. 5) of the respective viewer. Harada appears to be very concerned about whether to accept the responses but there is very little teaching about what to do with the responses. Accordingly, Harada does not teach or suggest, "generating a rating of the broadcast based at least in part on the received viewer feedback to the broadcast, the rating indicating a likelihood of interest in the first broadcast for potential subsequent viewers; and providing the rating of the broadcast to potential subsequent viewers" as recited in Claim 29. Accordingly, Claim 29 is believed to be allowable over the combination. The other pending claims are also believed to be allowable for the reasons discussed above with respect to the rejection based on Herz.

35 U.S.C. §103 Rejection

The Examiner has rejected Claim 19 under 35 U.S.C. §103(a) as being unpatentable over Herz. The Examiner asserts that "it would have been obvious to modify Herz's system to include offering incentives to the prior viewer because it is a typical business practice to encourage people to complete surveys/questionnaires so that a business can obtain useful information about a product or service." Applicant concedes neither that such a practice is typical in the context of the present invention nor that it would be obvious to make the proposed modification. Neither reference suggests such business practice or modification. The limitation of Claim 19 has been restated in Claim 34. Accordingly, Applicants respectfully request that if this objection is repeated with respect to Claim 34 and similar claims that a reference be provided to support the Examiners' position. Applicant submits that Claim 34 is allowable on the present record.

Conclusion

Applicants respectfully submit that the rejections have been overcome by the amendment and remark, and that the new claims are in condition for allowance. Accordingly, Applicants respectfully request the rejections be withdrawn and the new claims be allowed.

Invitation for a Telephone Interview

The Examiner is requested to call the undersigned at (303) 740-1980 if there remains any issue with allowance of the case.